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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/920,469 | 08/01/2001 | Henry Houh | EMPIR-018AUS | 5568 |
| 22468 | 7590 | 06/16/2005 | EXAMINER | |
| CHAPIN & HUANG L.L.C. WESTBOROUGH OFFICE PARK 1700 WEST PARK DRIVE WESTBOROUGH, MA 01581 | | | PHAN, THAI Q | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2128 | |

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/920,469

Applicant(s)

HOUH, HENRY

Examiner

Thai Q. Phan

Art Unit

2128

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2001.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-83 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-83 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 01 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date OCT. 12, 2002.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

This Office Action is in response to patent application S/N: 09/920,469, filed on 08/01/2001. Claims 1-83 are pending in the present action.

Information Disclosure Statement

The Information Disclosure Statement filed on 10/21/2002 was being considered.

Claim Objections

Claims 28, 30, 42, 52, 55, 57, 59, 69, and 80 are objected to as being in improper dependency. See MPEP § 608.01(n).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 79 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. What are the instructions? What they standing for? How do they work? How the processor output packets? Where are they form? The claim is also unclear for cited "a network processor a network processor".

Claim 80 is unclear for "to produce a characteristic of the packets onto a communication network". It's unclear because the communication network has its own packet characteristics.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-83 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang, Jay, US patent no. 6,845,352 B1.

As per claim 1, Wang anticipates a method and system for emulating a communication network with features very identical to the claimed invention. According to Wang, the network emulation includes steps

Receiving, with a network processor programmed to emulate network, an input packet stream (cols. 6-7, col. 8, lines 10-65, col. 9, lines 12-43, for example),

Providing, with the network emulation system, an output packet stream wherein the output packet stream comprising a modification of the input stream (cols. 6-10).

As per claim 2, Wang anticipates the modified output characteristics include delay, jitter, packet streams, etc (cols. 4-8).

As per claims 3-12, Wang anticipates the network testing for data network including the claimed limitation such as optical network, data stream, VOIP, MOP, etc.

As per claim 13, Wang anticipates a method and system for emulating a communication network with features very identical to the claimed invention. According to Wang, the network emulation includes steps

Receiving, with a network processor programmed to emulate network, an input packet stream or data stream profile (cols. 6-7, col. 8, lines 10-65, col. 9, lines 12-43, for example),

Providing, with the network emulation system, an output packet stream wherein the output packet stream comprising a modification of the input stream or effect the network would have on the emulated packet due to traffic profile (cols. 6-10):

As per claims 14-24, Wang anticipates the claimed limitations for network flow emulation.

As per claim 25, Wang anticipates a method and system for emulating a communication network with features very identical to the claimed invention. According to Wang, the network emulation includes steps

Receiving, with a network processor programmed to emulate network, an input packet stream (cols. 6-7, col. 8, lines 10-65, col. 9, lines 12-43, for example),

Programming the network processor to process and output data packets at a specific time for emulation,

Providing, with the network emulation system, an output packet stream wherein the output packet stream comprising a modification of the input stream (cols. 6-10).

As per claims 26-28, Wang anticipates the claimed limitation for data packet emulation.

As per claim 29, Wang anticipates a test method and system for emulating and for testing a communication network with features very identical to the claimed invention. According to Wang, the network emulation/testing includes steps

Receiving, with a network processor programmed to emulate network, a network emulator, an input packet stream or data stream profile (cols. 6-7, col. 8, lines 10-65, col. 9, lines 12-43, for example),

Providing, with the network emulation system, an output packet stream wherein the output packet stream comprising a modification of the input stream or effect the network would have on the emulated packet due to traffic profile (cols. 6-10).

As per claims 30-40, Wang anticipates the claimed limitations for testing data communication networks, wherein the networks include a plurality of characteristics, performances, traffic flow profiles, flow controls, etc.

As per claims 42-55, due to the similarity of claims 42-55 to the above claims, claims 42-55 are also rejected in like manner.

As per claims 56 and 79, Wang anticipates a computer program product for performing emulation and testing a communication data network with features very identical to the claimed invention. According to Wang, the network emulation program in the network emulator includes means

Receiving, with a network processor programmed to emulate network, an input packet stream or data stream profile (cols. 6-7, col. 8, lines 10-65, col. 9, lines 12-43, for example),

Providing, with the network emulation system, an output packet stream wherein the output packet stream comprising a modification of the input stream or effect the network would have on the emulated packet due to traffic profile (cols. 6-10).

As per claims 57-67, Wang anticipates the computer program product implemented in a system for testing and emulating the data network, wherein the data networks include optical networks, Ethernet and others, testing of data flow including data stream, VOIP, MOP, etc.

As per claims 68-83, due to the similarity of claims 68-83 to the claims above, claims 68-83 are also rejected in like manner.

Conclusion

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. US patent no. 6,445,696, issued to Foodeei et al, on Sept. 2002
2. US patent no. 6,845,352, issued to Wang, Jay, on Jan. 2005
3. US patent application publication no. 2002/0015387, issued to Hough, Henry, on Feb. 2002
4. US patent application publication no. 2002/0016937, Hough, Henry, on Feb. 2002
5. US patent publication no. US 2004/0250231, issued to Killian et al, on Dec. 2004

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2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Thai Phan whose telephone number is 571-272-3783. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jean Homere can be reached on 571-272-3780. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

3. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June 11, 2005


Thai Phan
Patent Examiner